**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 4404 of 1992**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**BACHUBHAI RAMZAN-ALI DAMARVALA - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR HASHIM QURESHI for Petitioner(s) : 1,
MR HUKUM SINGH AGP for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 01/03/2007**

**ORAL JUDGMENT**

1. Mr.Hashim Qureshi, learned counsel for the petitioner and Mr.Hukum Singh, learned Assistant Government Pleader for the respondents – State.

2. The petitioner is before this court challenging order

dtd.1/4/1991 passed by the Assistant Collector in Case No.Land/1901 under which, the Assistant Collector has observed that the land was lying barren, fallow and uncultivable for more than seven years, therefore, in accordance with the provisions of sec.65, the land would be forfeited in favour of the Government, and order dtd.2/8/1991, under which, the revision application filed by the petitioner, was returned for proper presentation.

3. Mr.Hashim Qureshi, learned counsel for the petitioner submits that the petitioner's brother Mohd.Ali son of Ramzan Ali Damarwala had purchased 1 Acre and 12 Gunthas of land bearing Survey No.306/1 and he applied for Non-Agricultural Permission, which was granted in his favour and was to remain in force upto 1/8/1965. The period between 1/8/1965 and 31/7/1970 was regularized and thereafter, the permission and its effect were extended upto 31/7/1971. The plank of the argument is that the order dtd.1/4/1991 was passed by the Assistant Collector without providing any opportunity of hearing to the petitioner.

4. From the order dtd.1/4/1991, it would clearly appear that a notice was issued to the petitioner on 25/7/1990 and he was required to appear before the Assistant Collector on

7/8/1990. The notice was served upon the petitioner. On 7/8/1990, case was adjourned to 21/8/1980 and thereafter on 3/9/1990, 17/9/1990, 8/10/1990, 23/10/1990, 6/11/1990, 3/12/1990, 15/1/1991, 5/2/1991, 18/2/1991, 21/2/1991 and on 25/2/1991 at the request of the petitioner. On 25/2/1991, neither the petitioner, nor his counsel appeared, therefore, the Assistant Collector proceeded with the matter, after going through the complete records and spot Panchnama, he recorded his satisfaction that the land was lying fallow and uncultivable for seven years or more. From these proceedings, it would clearly appear that an appropriate opportunity was afforded to the petitioner, but, unfortunately, the petitioner did not avail the opportunity in its true sense.

5. So far as order dtd.2/8/1991 returning the revision memo for its presentation is concerned, I cannot find any fault with the order passed by the Gujarat Revenue Tribunal as, it had observed 57 BLR page 199, a judgment of this Court. The same view has been reiterated by this Court in the year 1997 in 1997 (2) GLR 780.

6. Learned counsel for the petitioner has also referred to order dtd.30/11/1979 passed by the Assistant Collector

on the application filed by the petitioner under sec.20 of the Agricultural Land Ceiling Act. The said application has been rejected. Be that as it may, if the petitioner is not the owner of the property because of the order of confiscation and forfeiture, then his application under sec.20 of the Act was not maintainable.

7. In the petition, the petitioner has not satisfactorily explained his absence on the date the Assistant Collector proceeded ex-parte. Taking into consideration the totality of the circumstances and legal position, I am unable to hold that the Assistant Collector or the Gujarat Revenue Tribunal or the Deputy Collector were unjustified in passing the orders against the interest of the petitioner.

8. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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